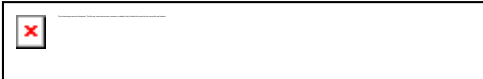


tran, peter

From: Noah Perch-Ahern <nperchahern@glaserweil.com>
Sent: Monday, March 28, 2016 5:20 PM
To: Wirtschafter, Joshua
Subject: RE: Subpoena to Burleson
Attachments: removed.txt

Hello Josh, just wanted to follow-up on this and the FOIA request. Just checking on timing and if you wanted to chat.
Thanks, -Noah



Noah Perch-Ahern | Partner

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From: Noah Perch-Ahern
Sent: Friday, March 25, 2016 3:57 PM
To: 'Wirtschafter, Joshua'
Subject: Subpoena to Burleson

Hi Josh,

Per my earlier promise, here's some authority for the general proposition that a contractual agreement doesn't create a privilege or shield documents from disclosure in litigation.

- *Board of Trustees of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 521 (C.D. Cal. 2008) ("Moreover, 'the simple fact that the parties to the settlement agreement agreed to its confidentiality does not shield it from discovery.'") (citation omitted).
- *In re C.R. Bard, Inc. Pelvic Repair Sys. Prods. Liab. Litig.*, 287 F.R.D. 377 (S.D. W. Va. 2012) ("There is no privilege for documents merely because they are subject to a confidentiality agreement, and confidentiality agreements do not necessarily bar discovery that is otherwise permissible and relevant.") (citations omitted).
- *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 685 (D. Kan. 2004) ("Simply put, litigants may not shield otherwise discoverable information from disclosure to others merely by agreeing to maintain its confidentiality.").
- *Dow Jones Co. v. FERC*, 219 F.R.D. 167, 178 (C.D. Cal. 2003) ("Agreements for confidentiality, standing alone, are insufficient to satisfy the requirements needed for nondisclosure under Exemption 4 [of FOIA].").
- *Grumman Aerospace Corp. v. Titanium Metals Corp. of Am.*, 91 F.R.D. 84, 87 (E.D.N.Y. 1981) ("By themselves, the confidentiality agreements entered into by Nathan, DOD [Department of Defense], RMI and TMCA do not immunize the Nathan report or other materials from discovery.").

I hope this addresses your concern.

Of course, I know you may have some specifically applicable privileges as to certain documents. As we discussed, my point is that the non-privileged documents in Burleson's file should be produced. Can we chat about this? I want to make sure I'm addressing your questions and concerns, and I'm hoping to get the documents next week if possible.

Many thanks,
Noah



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